

PARTIES

2. Plaintiff is an individual with a principal place of residence at [REDACTED]

3. Upon information and belief, Defendant New York State Division of State Police is a state agency organized under the laws of the state of New York with a principal place of business in Albany, New York.

4. Defendant New York State Division of State Police is an employer within the meaning of the Americans with Disabilities Act.

5. Defendant Jeffrey VanAuken is an individual who, upon information and belief, resides at [REDACTED]

6. Defendant VanAuken is and was, at all times referenced in this complaint, a Captain with the New York State Division of State Police.

7. At all times referenced in this complaint, VanAuken was Plaintiff Frank Abbott's Captain and had authority over him.

8. At all times referenced in this complaint, the actions taken by VanAuken with regard to Plaintiff were taken under color of state law and were taken in his role as a Captain with the New York State Division of State Police.

JURISDICTION

9. Subject matter jurisdiction is conferred on this Court by 28 U.S.C. § 1331.

10. Plaintiff is a citizen of the State of New York.

11. Upon information and belief, the Defendant New York Division of State Police is an agency of the State of New York.

12. Upon information and belief, Defendant Jeffrey VanAuken is a citizen of the State of New York who resides within the Northern District of New York.

13. Personal jurisdiction is proper in this Court as all parties are residents of the State of New York.

14. Plaintiff filed an administrative complaint with the Division of Human Rights, which dually filed the complaint with the Equal Employment Opportunity Commission on or about October 26, 2018.

15. On or about June 25, 2019, the Equal Employment Opportunity Commission issued a Notice of Rights letter to the Plaintiff. A copy of this letter is attached hereto as Exhibit "A".

VENUE

16. Venue is proper in this Court by virtue of 28 U.S.C. § 1391(b)(2) as the events giving rise to this claim occurred within the District.

FACTS COMMON TO ALL CLAIMS

17. Plaintiff repeats and realleges paragraphs 1-16 as if fully set forth herein.

18. Abbott is an individual with a disability, post-traumatic stress disorder (PTSD) caused by injuries incurred in the line of duty.

19. Abbott reported to the New York State Police Academy on March 2, 2015.

20. After satisfactorily completing his training, he was assigned to the Troop C-Kirkwood Barracks of the New York State Police and he first reported in September 2015.

21. Prior to January 2, 2018, Abbott's performance was excellent.

22. Prior to January 2, 2018, Abbott had no performance or disciplinary issues with the New York State Division of State Police.

23. On January 2, 2018, Abbott was involved in a work incident where he was struck by a motor vehicle and was forced to discharge his firearm in order to stop the driver of the vehicle from striking his partner.

24. Abbott was cleared of the any wrong doing in connection with the shooting within seventy-two hours by the Broome County District Attorney's Office.

25. Abbott suffered significant physical injuries as a result of the accident.

26. Abbott's physical injuries included injuries to his left knee, left ankle, neck, face, eyes and ears.

27. In addition to the physical injuries Abbott suffered as a result of the accident, in late February into early March of 2018, Abbott was diagnosed with Post-Traumatic Stress Disorder (PTSD) by his primary care physician.

28. After the accident on January 2, 2018, Abbott began to experience insomnia, night terrors, increased anxiety, and panic attacks.

29. These symptoms progressed as time went on and became increasingly difficult for Abbott to manage.

30. In managing those symptoms, Abbott has adhered to advice of his doctors, including mental health professionals.

31. In an attempt to improve his PTSD symptoms, Abbott attended several relevant courses, expending his personal funds to do so.

32. Abbott attended a three-day Post Critical Incident Course in Massanetta, Virginia from June 4, 2018 to June 7, 2018.

33. Abbott also attended a two-day course on trauma put on by the New York State Division of Criminal Justice Services.

34. Abbott also attended the Uniform Service Program at the Brattleboro Retreat in Vermont from July 30, 2018 to August 7, 2018.

35. Despite Abbott's best efforts, his PTSD symptoms did not improve.

36. Prior to 2018, Abbott was never diagnosed with any mental illnesses.

37. In 2018, Abbott's Captain at State Police Binghamton was Jeffrey VanAuken.

38. Initially, VanAuken was supportive and appeared to genuinely care about Abbott's progress both physically and mentally.

39. However, shortly after Abbott was diagnosed with PTSD and depression due to the incident on January 2, 2018, Captain Jeffrey VanAuken began calling Abbott saying that Abbott needed to return to work.

40. VanAuken called repeatedly, at least weekly, to insist Abbott return to work.

41. Each time, Abbott advised Captain VanAuken that he was following the directions of his doctors and could not return to work at this time.

42. During this time period, Abbott was diagnosed with PTSD and Major Depressive Disorder by three psychiatrists including the independent medical examiner for Workman's Compensation.

43. Abbott continued to adhere to his doctor's directions and did not return to work despite VanAuken's continuous calls.

44. Abbott's mental illness symptoms worsened as a result of VanAuken's conduct.

45. Abbott suffered from sleeplessness, increased irritability, and increased anxiety, which lead to physical symptoms such as stomach problems and headaches.

46. VanAuken's multiple phone calls set Abbott on edge and became a trigger.

47. Whenever Abbott's phone would ring, Abbott would immediately panic and assume it was VanAuken and the New York State Division of State Police calling to question him. He would often attempt to avoid his phone due to this fact.

48. Abbott's relationship with his wife suffered due to his increased irritability.

49. On or about April 25, 2018, Abbott was finishing a positive session with his psychologist Dr. Jack Houk when Captain VanAuken called Abbott on his cellphone.

50. During the phone call, Captain VanAuken said "This is a bunch of bullshit, you've been out for five months, we don't need this to get out of hand like with Trooper Krause."

51. Trooper Krause is another Trooper who had been out on sick leave due to an on-duty injury in 2017.

52. Trooper Krause was unable to return to work for six months.

53. Upon information and belief, Trooper Krause also received phone calls from VanAuken insisting he return to work while he was out of work due to a disability.

54. Upon information and belief, Trooper Krause went back to work against doctor's order because of VanAuken's harassment of him.

55. Upon information and belief, Trooper Krause suffered and continues to suffer physically, mentally and in his career as a result of his work related injury.

56. VanAuken's tone during the phone call with Abbott in April 2018 was threatening, forceful and demanding.

57. During the phone call, VanAuken also told Abbott that doctors "are full of shit" and "will do whatever to keep you out of work."

58. On or around April 25, 2018 Abbott contacted the Employee Assistance Program (EAP) about the comments that VanAuken made during the phone call.

59. The EAP did not offer any help or advice to Abbott regarding the interaction. Abbott was told "Deal with it, Captains come and go, you don't want to file a complaint and stir the pot".

60. Abbott reported his concerns of harassment and hostile work to Elliot Boyce (Head Coordinator of EAP) and Joseph McCabe (Troop C EAP Member). They were disinterested in helping Abbott and did not give him viable options when he called begging for help several times.

61. The New York State Division of State Police require than an officer on sick leave be in contact with their Captain on a regular basis.

62. These contacts with Captain VanAuken left Abbott feeling depressed and anxious because VanAuken would berate Abbott about not returning to work.

63. On May 3, 2018, Abbott contacted VanAuken at the State Police barracks in Binghamton to explain that he needed to reschedule a mandatory sick leave visit.

64. VanAuken responded in a sarcastic and degrading tone saying “not to be a dick, you weren’t blown up by an IED.”

65. Following this comment VanAuken laughed.

66. On May 11, 2018, Abbott reported VanAuken’s conduct to PBA Attorney Maria Morris.

67. Ms. Morris advised Abbott that she would contact Major Neely Jennings in Human Resources to correct the situation.

68. Ms. Morris texted Abbott shortly after and advised that VanAuken had been counseled on his actions.

69. Ms. Morris also advised Abbott that he was to continue to appear at the State Police barracks in Binghamton monthly for mandatory sick leave meetings with VanAuken.

70. Abbott voiced concern about these mandatory meetings due to the previous actions of VanAuken.

71. Despite his concerns, Abbott went to the sick leave meeting at the State Police barracks in Binghamton on May 14, 2018.

72. At the sick leave meeting on May 14, 2018, the first words that VanAuken said to Abbott were “Where’s your shit?,” referring to Abbott’s medical records.

73. VanAuken’s face was red and his jaw was clenched.

74. Abbott responded that he was advised by the PBA to send his medical records directly to Human Resources.

75. In an attempt to break the silence that ensued, Abbott said to VanAuken, "Captain, I respect you, I just contacted the PBA to see what my rights were and I want to listen to my doctors."

76. VanAuken then made several statements indicating Abbott should get back to work.

77. Abbott respectfully responded "You want tickets, I write tickets, you want arrests, I make arrests, you want drugs, I get them, I have always done my job and I feel as if I am being treated unfairly."

78. VanAuken angrily responded "You don't write tickets for me, you do those things for the people of the State of New York."

79. VanAuken told Abbott that if Abbott wanted to see him pissed off again, all Abbott would have to do is to say "that shit" again.

80. Abbott, again respectfully, responded, "Captain, I meant that as a blanket statement, that I do my job to the best of my ability."

81. VanAuken ended the meeting abruptly and did not shake Abbott's hand.

82. In June 2018, Sergeant Matthew Pokigo, Abbott's first line supervisor, hand delivered to Abbott a letter from the New York State Police Division of State Police Physician concurring with Abbott's physician that Abbott was disabled at the present time.

83. At that time, Abbott complained to Pokigo about the treatment he received by VanAuken.

84. Pokigo acknowledged the problem and suggested that Abbott call him rather than VanAuken whenever possible.

85. Upon information and belief, Pokigo did not report Abbott's complaint to anyone.

86. On June 12, 2018, another sick leave visit was scheduled with VanAuken.

87. Dispatcher Alicia Smith called Abbott to set the visit up over the phone.

88. During the call, Ms. Smith stated that the visit would be with Major McEvoy and Lieutenant Crosswell.

89. Abbott made sure that he had his Troop C Union Delegate, Trooper Andy Davis, present at this sick leave visit to serve as a witness.

90. Prior to the meeting, Abbott met with Trooper Davis. Trooper Davis stated "They think you're being disrespectful for having me present and for not turning your medical records over to the command. They also said "He (Abbott) used to be such a good Trooper, what happened?"

91. During the meeting, Abbott's anxiety was heightened and caused him severe emotional distress.

92. After the meeting, Abbott had a panic attack and digestive issues, which was common after the confrontational sick leave meetings.

93. Lieutenant Crosswell handed Abbott a return to modified duty form and said that he would serve the form on all of Abbott's doctors, personally.

94. Abbott informed Crosswell that he had given his doctors the form and they had not agreed to clear Abbott to return to work.

95. Crosswell responded again with the threat that he would serve the papers to Abbott's doctors regardless.

96. Abbott's treating psychologist reported to New York State Police Human Resources that Abbott's progress in treatment was stunted because of Abbott's treatment during the sick leave visits.

97. On July 16, 2018, Zone Sergeant Jason Cease came to Abbott's residence for a sick leave meeting.

98. Cease was very polite and said "I heard you had a beef with the Captain and I'm sorry about that."

99. Abbott explained that he did not have any "beef" with VanAuken, but rather VanAuken took it personally that Abbott could not return to work on VanAuken's timeframe.

100. On September 5, 2018, James Banish of the Warren County Sheriff's Department attended one of Abbott's therapy sessions with Dr. Jack Houk.

101. Banish became Abbott's EAP/advocate due to lack of support or help from Abbott's agency, New York State Police, PBA, and New York State Police EAP.

102. Banish works at the discretion of his Sheriff and helps law enforcement members throughout the State regardless of their agency.

103. Banish is nationally recognized as an Officer for mental health advocacy among police officers.

104. Upon information and belief, Banish had assisted other officers who had been discriminated against on the basis of their disability by the New York State Police Department.

105. Since September 2018, Banish has attempted to advocate for Abbott with the New York State Police Department and to provide support to Abbott.

106. As a result of Banish's advocacy, including complaints on Abbott's behalf, the New York State Police became more difficult and inflexible with Abbott and engaged in additional harassment of him.

107. Abbott's session notes from Dr. Houk from September 2018 indicate that "[i]t is clear that these visits from the agency are blocking progress in therapy."

108. The session notes also stated that Dr. Houk intended to "[d]raft a letter stating that in order for therapy to continue productively that these visits by the police agency for whom [Abbott] worked will need to stop at least until [Abbott's] immediate situation and PTSD symptoms are resolved."

109. On September 5, 2018, Abbott and James Banish had a conference call with Major Neely Jennings to ensure that VanAuken would act professionally during the sick leave visit that was scheduled for 2 pm that day.

110. During the call, Major Jennings denied having been informed of any misconduct by VanAuken.

111. Abbott then reminded Major Jennings of Attorney Maria Morris' phone call.

112. Jennings responded with "I did not feel comfortable speaking with James Banish regarding the misconduct of Captain VanAuken".

113. Abbott then spoke up, as the call was on speaker phone, advising Jennings that James Banish was speaking on Abbott's behalf. Jennings said she had addressed the issue and Captain VanAuken would "act professional" during the sick leave visit, and if he did not, to contact her immediately.

114. Around 2:00 pm, Sergeant Cease and VanAuken came to Abbott's residence for a sick leave visit.

115. Sergeant Cease was again professional and shook Abbott's hand.

116. VanAuken only said a few words and did not shake Abbott's hand. He appeared irritated that Banish was present during the meeting.

117. On September 17, 2018, Dr. Houk sent a letter to the State Police which stated that the sick leave visits were detrimental to Abbott's treatment and requesting an accommodation of some other form of check in until Abbott could better handle the visits.

118. Major Jennings acknowledged receipt of the letter but said that "they will continue to follow the protocol."

119. Major Jennings denied the requested accommodation and did not explore any other accommodation that would have assisted Abbott with his disability.

120. The harassing conduct of VanAuken caused Abbott's PTSD symptoms to worsen to the point where it was impossible for Abbott to manage the symptoms.

121. The harassing conduct of VanAuken stunted progress that Abbott had made in therapy.

122. The harassing conduct of VanAuken caused Abbott to regress in his treatment for PTSD.

123. Despite Abbott making complaints to at least six members of his agency (Pokigo, Boyce, McCabe, Morris, Davis, Human Resources, Major Neely Jennings), his physician writing letters of complaint and Banish advocating for Abbott, the New York State Police Department did nothing about VanAuken and the other intimidating, hostile and harassing sick leave visits.

124. In fact, Abbott's efforts to get relief resulted only in retaliation and additional harassment from VanAuken and others during the sick leave visits.

FIRST CAUSE OF ACTION

**HARASSMENT/ HOSTILE WORK ENVIRONMENT, AMERICANS WITH
DISABILITIES ACT**

125. Plaintiff repeats and realleges paragraphs 1-124 as if fully set forth herein.

126. Abbott suffers from PTSD, a disability under the Americans with Disabilities Act of 1990.

127. PTSD is a mental impairment that substantially limits one or more of Abbott's major life activities.

128. Abbott has documentation confirming a diagnosis of PTSD from several physicians.

129. The conduct of VanAuken and others subjected Abbott to unwelcome harassment on numerous occasions.

130. The harassment Abbott endured included comments by VanAuken, such as: "[n]ot to be a dick, but you weren't blown up by an IED" and doctors are "full of shit" and doctors "will do whatever to keep you out of work."

131. Other harassment included threats to get Abbott ordered back to work and comments that Abbott was misusing his injuries and letting it get out of hand.

132. Abbott was forced to continue to have contact with VanAuken at monthly mandatory sick leave visits, even after Abbott voiced concerns about this because of VanAuken's behavior.

133. The continued contact and comments by VanAuken and others stunted Abbott's treatment for his PTSD diagnosis and caused Abbott to digress in treatment.

134. The comments regarding Abbott by VanAuken and others only occurred because of Abbott's disability.

135. The treatment Abbott endured was continuing, on-going, abusive and egregious.

136. As a result of the treatment Abbott endured, he suffered sleeplessness, anxiety, depression, nightmares, stomach upset, difficulty in his relationship, suicidal thoughts, and other mental and emotional distress, including regression in his treatment for his job related PTSD.

137. Plaintiff is entitled to damages to compensate him for the emotional distress he suffered.

SECOND CAUSE OF ACTION

FAILURE TO ACCOMMODATE- AMERICANS WITH DISABILITIES ACT

138. Plaintiff repeats and realleges paragraphs 1-137 as if fully set forth herein.

139. Abbott suffers from PTSD, a disability under the Americans with Disabilities Act of 1990.

140. PTSD is a mental impairment that substantially limits one or more of Abbott's major life activities.

141. Abbott has documentation confirming a diagnosis of PTSD from several physicians.

142. Abbott requested an accommodation of handling sick leave check-ins in a manner other than in person meetings with VanAuken and others.

143. Abbott's physician explained to representatives of the defendant that the sick leave visits were exacerbating Abbott's PTSD symptoms and requested a temporary stop of the visits to allow Abbott to recover.

144. Defendant unreasonably failed and refused to consider any accommodation of Abbott relating to the sick leave visits.

145. Defendant did not even engage in an interactive process to determine whether a workable accommodation existed.

146. Instead, Defendant insisted that Abbott continue the sick leave visits with VanAuken and others.

147. As a result of Defendant's failure to engage in an interactive process or to accommodate Abbott, he suffered increased PTSD symptoms, sleeplessness, anxiety, depression, nightmares, stomach upset, difficulty in his relationship, suicidal thoughts, and other mental and emotional distress, including regression of his treatment for PTSD.

148. Plaintiff is entitled to damages to compensate him for the emotional distress he suffered.

THIRD CAUSE OF ACTION—RETALIATION

149. Plaintiff repeats and realleges paragraphs 1-148 as if fully set forth herein.

150. Abbott engaged in protected activity when he complained about the harassment he experienced to Sergeant Pokigo, Elliot Boyce, Joseph McCabe, Maria Morris, Andrew Davis, Human Resources, and Major Neely Jennings.

151. Abbott engaged in protected activity when his physician wrote letters complaining about the harassment he was experiencing.

152. Abbott engaged in protected activity when Banish complained on his behalf about the harassment he was experiencing.

153. As a result of Abbott's protected activity, he was subject to increasingly abusive comments and phone calls from VanAuken and others.

154. As a result of Abbott's protected activity, he was forced to continue with detrimental sick leave visits, was advised he was letting his PTSD get out of hand, was repeatedly called and asked when he was returning to work and subjected to other conduct.

155. Defendant did nothing to protect Abbott despite Abbott's complaints and the complaints made on Abbott's behalf.

156. As a result of the retaliation against Abbott for his protected activity, Abbott suffered increased PTSD symptoms, sleeplessness, anxiety, depression, nightmares, stomach upset, difficulty in his relationship, suicidal thoughts, and other mental and emotional distress, including regression of his treatment for PTSD.

FOURTH CAUSE OF ACTION 42 U.S.C. § 1983

157. Plaintiff repeats and realleges paragraphs 1-156 as if fully set forth herein.

158. VanAuken is a Captain for the New York State Division of State Police.

159. VanAuken is a supervisor for a public employer.

160. VanAuken had authority and control over Abbott, who reported to him.

161. Abbott was forced, by virtue of his position with the New York State Division of State Police, to attend meetings with VanAuken who held such meetings under his authority as a Captain in the New York State Division of State Police.

162. During these meetings VanAuken berated Abbott because of his disability.

163. VanAuken regularly called Abbott to insist Abbott return to work despite knowing Abbott could not return to work.

164. VanAuken made comments to Abbott intended to intimidate and upset Abbott such as “no offense, you weren’t blow up by an IED”; “we don’t need this to get out of hand like Trooper Krause.”

165. VanAuken referenced other Troopers he had forced back to work despite their PTSD diagnosis.

166. VanAuken was hostile to Abbott regarding his PTSD, despite knowing Abbott suffered significant physical injury and had also been in an officer-involved shooting.

167. VanAuken's conduct violated the equal protection guarantee of the Constitution as his harassment and poor treatment of Abbott was based solely on the fact that Abbott had a disability—PTSD.

168. As a result of VanAuken's violation of Abbott's constitutional right to be free from discrimination and harassment on the basis of his disability, Abbott suffered nightmares, upset stomach, mental and emotional distress, increased PTSD, difficulty in his relationships, headaches, depressions and anxiety.

169. Abbott should be compensated for this mental and emotional distress by VanAuken.

CONCLUSION

WHEREFORE, plaintiff respectfully requests a jury trial on all issues; and hereby demands judgment in an amount to be determined at trial plus interest at the appropriate statutory rate; plus the costs and attorneys' fees incurred in bringing this action; and for any other and further relief this Court deems just and proper.

Dated: September 16, 2019
Binghamton, New York


Dawn Lanouette, Esq.
Bar Roll No. 302595
HINMAN, HOWARD & KATTELL, LLP
Attorneys for the Plaintiff
Office and Post Office Address
80 Exchange Street
P.O. Box 5250
Binghamton, NY 13902-5250
[Telephone: (607) 723-5341]
dlanouette@hhk.com